No. 364

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,

Appellant,

vs.

THE CITY OF SEATTLE, a municipal corporation, and HARRY W. CARROLL, as Comptroller of the City of Seattle,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLANT

OTTO B. RUPP,

ALFRED SUTRO,

Attorneys for Appellant.

MCMICKEN, RAMSEY, RUPP & SCHWEPPE,

PILLSBURY, MADISON & SUTRO,

Of Counsel.

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Opinion below. *The Pacific Telephone and Telegraph Company v. City of Seattle et al.*, reported in 172 Wash. 649 (R. 28-42).

Jurisdictional Authority. An appeal granted June 19, 1933, pursuant to Act of February 13, 1925, c. 229 (43 Stat. 937); Judicial Code, 237(a); 28 U. S. C. A. § 344; and Rule 46, para. 2, of the rules of this court, the case being one in which, under the legislation in force when the Act of January 31, 1928, was passed (45 Stat. 54) a review could be had in the Supreme Court of the United States on writ of error as a matter of right (R. 45).

Date of Judgment, etc., June 14, 1933 (R. 42). Petition for Appeal, Assignment of Errors, and Order Allowing Appeal, June 19, 1933 (R. 43-50).

NATURE OF THE CASE. RULINGS.

The Pacific Tel. and Tel. Co. sought to enjoin the City of Seattle, Washington, and Harry W. Carroll, its comptroller, from enforcing Ordinance No. 62662 of the ordinances of the City of Seattle, imposing a tax of 4% upon the gross income, as defined in said ordinance, of appellant, upon the ground that the said definition of gross income was so vague and indefinite as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, in that the definition of gross income in said ordinance renders it impossible for appellant to compute, with reasonable certainty, the amount of the tax, if any, owing by it thereunder, and subjects appellant to criminal penalties for noncompliance

with the said vague and indefinite terms of said ordinance.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLANT

The sole question here involved is whether an ordinance of the City of Seattle attempting to impose a tax of four per cent on the "gross income" of appellant, as that term is defined in the ordinance, is not invalid on the ground that the definition is so vague and indefinite as to constitute a denial of due process of law.

STATEMENT OF THE CASE

The case was tried upon an amended complaint and demurrer thereto. The trial judge sustained the demurrer, and appellant declining to plead further, a judgment dismissing the suit was entered (R. 26)

and an appeal taken to the Supreme Court of Washington, which court, one judge dissenting, affirmed the decision of the trial court, the opinion being reported in 172 Wash. 649, and is found in the record in this case on pages 28 to 42.

The amended complaint, so far as here material, recites that appellant is a California corporation, conducting a general telephone and telegraph business in the states of California, Oregon, Washington, and a portion of Idaho, furnishing to the public therein telephone exchange service and both intrastate and interstate telephone and telegraph service (R. 1). That telephone exchange service is service between telephone stations within the same exchange area; that telephone toll service is telephone service between telephone stations located in different exchange areas. That the State of Washington is divided into a number of exchange areas, among which is the Seattle Exchange. That in pursuance of its statutory powers, the Department of Public Works of Washington, the regulatory body of that state, established the Seattle Exchange prior to 1931. That as so established by the Department of Public Works the Seattle Exchange has at all times embraced not only the territory within the City of Seattle but also the territory adjacent thereto, and that there are located in the Seattle Exchange, but outside the city limits of Seattle, several thousand telephone stations, the exact number in 1931 being unknown to appellant.

That the Interstate Commerce Commission has prescribed the form of accounts to be kept by appellant, and the Department of Public Works of the State of

Washington has adopted and prescribed for telephone companies within its jurisdiction the same form of accounts. That both of these sets of accounts define the term "Central Office Equipment" (R. 3). That it is impossible for appellant to render any telephone exchange service at all without the use of central office equipment. That the investment of appellant in central office equipment located inside the city limits of Seattle is in excess of $10,000,000. That this central office equipment is housed in eleven buildings. That the company owns the land on which ten of these buildings are situated, and its investment in such land and buildings in 1931 exceeded the sum of $3,000,000. That the customers of appellant residing within the Seattle Exchange area but outside the city limits of Seattle are necessarily furnished exchange service by the use of the central office equipment housed in the buildings just referred to, plus certain telephone plant consisting of poles, wires, cable and conduits, a portion of which are located inside the city limits and a portion located outside the city limits, plus telephone stations, all of which are located outside the city limits.

That it was impossible for the appellant to estimate or determine the amount of money received by it in 1931 from its customers receiving exchange service in the Seattle Exchange but located outside the city limits of Seattle. That it was also impossible for the company to determine the amount of money received in 1931 from its customers in the Seattle Exchange, but who lived outside the city limits of Se-

attle, from intrastate telephone toll service and interstate telegraph service (R. 4-7).

That the appellant, in furnishing intrastate telephone toll service to its customers living inside the city limits of Seattle, must and does use real property owned by the appellant and situated in the cities and towns of the state other than Seattle, in which the appellant operates (R. 6).

Paragraph IV of the amended complaint recites that on May 23, 1932, the city council of the City of Seattle passed Ordinance No. 62662, entitled:

> "An ordinance relating to, and providing for, a license or occupation tax upon certain businesses, occupations, pursuits and privileges; defining offenses and providing penalties."

Section 2 of that ordinance defines "gross income" as follows:

> "The value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness or stocks and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor, costs, interest or discount paid, or any expense what-

soever, and without any deduction on account of losses." (R. 14)

Section 5, par. 5, provides that a fee or tax equal to four per cent of the total gross income shall be paid by any person engaged in carrying on a telegraph and/or telephone business (R. 16).

Section 3 of the ordinance provides that "After the 1st day of July, 1932, no person shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this ordinance without having first obtained and being the holder of a valid and subsisting license so to do, to be known as an 'Occupation License'." It further provides that "Any taxpayer who engages in, or carries on, any business subject to tax hereunder without having his 'Occupation License' so to do, shall be guilty of a violation of this ordinance for each day during which the business is so engaged in or carried on, and any taxpayer who fails or refuses to pay the license fee or tax or any part thereof on or before the due date shall be deemed to be operating without having his license so to do."

Section 24 provides that "Any person violating or failing to comply with any of the provisions of this ordinance, or any lawful rule or regulation adopted by the City Comptroller pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not to exceed $300.00, or by imprisonment in the city jail for a term not exceeding ninety days, or by both such fine and imprisonment."

(The full text of the ordinance is printed in the

appendix to this brief and also at pp. 14-25 of the Record).

The appellant has made no payment to the City, but promptly brought a suit to enjoin the City from enforcing the ordinance on the ground, *inter alia*, that the definition of "gross income" in the ordinance is so vague and indefinite as to constitute a denial of due process of law, and which ground constitutes the only specification of error which the appellant here makes.

SPECIFICATION OF ERROR

The Supreme Court of the State of Washington erred in refusing to hold that Ordinance No. 62662 of the City of Seattle, Washington, was so vague and indefinite as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, in that the definition of gross income in said ordinance renders it impossible for the appellant to compute, with reasonable certainty, the amount of the taxes, if any, owing by it thereunder, and subjects appellant to criminal penalties for noncompliance with the said vague and indefinite terms of said ordinance.

ARGUMENT

As heretofore stated, the ordinance provides that the appellant is to pay annually to the City (a) "a tax equal to four per cent (4%) of the total gross income from [its] business in the City." Failure to pay such tax subjects the taxpayer to a fine of not to exceed $300 or to a term of imprisonment in the city jail not exceeding ninety days, or to both such fine and imprisonment, and each day constitutes a separate offense (§§ 3 and 24; R. 15, 25). Gross income is defined as follows:

> "The value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness or stocks and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses."

Gross income, then, according to this definition, is (a) the value proceeding or accruing from the sale of tangible property or service PLUS (b) receipts by reason of the investment of capital in the business

engaged in, including rentals, royalties, fees or other emoluments, however designated, but excluding receipts or proceeds from the *use* or sale of real property. There are, therefore, two factors in gross income, and the company is to pay 4% on the sum total of those two factors.

Now what does this first phrase, "value proceeding or accruing from the sale of tangible property or service," mean? What does the word "value" mean as used in this section of the ordinance? It is, of course, well recognized that the word "value" is the most intensely defined word in the English language. It is not possible at any time to determine the meaning of the word "value" unless the precise meaning to be given the word is denoted by the use of some other word or words, such as "sound," "reproduction," "replacement," "market." In some instances value is synonymous with cost price. If we talk of the value of the stock of a corporation, we mean the net value of its assets, which is found by deducting its indebtedness from the gross market value of its tangible and intangible property.

State v. Karr, 64 Neb. 514.

The primary definition given to the word "value" by lexicographers is "worth," but this substitution of one word for another does not aid us here.

It has been the contention of the respondent City throughout this litigation that the phrase now under discussion means gross receipts. In reason, however, that cannot be true. If a furniture dealer sells a desk, which has cost him $10, for either $10 or that amount plus cost of sale, has any value proceeded or accrued

to him from the sale of such desk? Prior to the sale he had a commodity for which he had paid $10. After the sale he had his $10 back, but not the desk. How has any value proceeded or accrued to him from such transaction?

The City in the court below sought to bolster its argument that the first phrase means gross receipts by claiming that the following clause, "without any deduction on account of the cost of the property sold, the cost of materials used, labor, costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses," modified the phrase, "the value proceeding or accruing from the sale of tangible property or service." But the clause just quoted does not and cannot qualify that phrase. The quoted clause modifies the provision for the payment of 4% on receipts derived from the investment of capital, etc.

Lewis' Sutherland on Statutory Construction (2d ed.) Sec. 420.

But, wholly irrespective of whether the first phrase means gross receipts or net receipts or has any meaning at all, it is, we think, clear that the second phrase in the definition is so vague and indefinite as to render the ordinance unenforceable as to appellant.

In the first place, receipts are defined as those receipts which arise "by reason of the investment of capital in the business engaged in." Now, how is the taxpayer to tell the amount of receipts which he obtained by reason of the *investment of capital* in the business engaged in? Receipts are not and cannot be the mere product of the investment of capital. Re-

ceipts are the product of investment of capital plus skill of management, labor, etc.

In *State v. Express Co.*, 60 N. H. 219, 244, it is said that a gross receipts tax is one based "not on the amount of capital invested but on the capacity for business of the managers or owners."

Illustrations of the fact that receipts are not derived solely from the investment of capital need not be given. The experience of all mankind demonstrates that managerial skill is a large factor in the amount of receipts of any business. As said in *State v. Express Co.*, 60 N. H. 219, 244:

> "The gross receipts of one company may be small and the net profits large; while of another, the gross receipts may be large and the profits small—or there may be none at all. It makes no allowance for the skill, experience, business tact or enterprise of the owners or managers, but all these which enter into the gross receipts are thus made to pay a share of the taxes."

It was conceded in the court below, and will, we think, be conceded here, that the receipts of appellant's business are not derived from the investment of capital only. But who is to determine what proportion of the appellant's receipts arises from managerial skill, labor, etc., and what proportion arises from the investment of capital? Who possesses a measuring rod by which he may ascertain these respective proportions? What criteria is the tribunal before whom this question comes to employ? If a taxpayer guesses, with the best of intentions, that one-half of his receipts are derived from the in-

vestment of capital, is he to be fined and imprisoned because someone else makes a different guess? Surely, the salutary doctrine announced by the Supreme Court of Texas in *Western Union Telegraph Co. v. Texas*, 62 Tex, 630, is peculiarly pertinent here. It is there said:

> "It is of the utmost importance for the protection of the taxpayer that tax laws should be certain both as to the thing taxed and as to the amount of the tax and the *manner of its ascertainment*, that the taxpayer may have an opportunity, *without the expense of litigation*, to pay such taxes as he may owe, and a tax law which does not accomplish this purpose *ought to be held invalid*, whether this results from an attempted exercise of power not possessed, through which the law becomes uncertain by both proper and improper subjects being combined and selected for taxation, or by the failure of the legislature *for any other reason* to furnish the *rules* by which taxes may be levied, assessed and collected."

See, also:

State v. Humble Pipe Line Co., 112 Tex. 375;

State ex rel. Wyatt v. Ashbrook, 154 Mo. 375;

Standard Oil Co. v. State, 178 Ala: 400;

Commonwealth v. P. Lorillard Co., 129 Va. 74;

Winslett v. Case-Fowler Co., 173 Ga. 539.

Moreover, the principle announced in the case of

State v. West Side Street Ry. Co., 146 Mo. 155, is squarely in point here. In that case a state statute provided that if the city granted a franchise, it was to be given to the bidder who would pay "the largest percentage yearly of the gross receipts derived from the *use* and *occupation*" of the streets, "provided that such payment shall in no case be less than two per cent of the gross earnings during the first five years of such occupation and use." The court said:

> "Upon what gross earnings is the percentage to be computed? A large capital must be invested in the machinery and appliances for conducting a street railway, aside from the tracks laid in the streets. The act seems to contemplate that the bid shall be a percentage only of the receipts derived from the use and occupation of the public property. How is the *proper proportion* of the *gross earnings* that should be attributed to the capital invested in the power stations, machinery, etc., to be ascertained? Shall it be by valuing the entire plant, and deducting therefrom the proper valuation of the machinery, and apportioning the gross earnings according to these amounts? *If so, how shall this value be fixed and by whom? The act furnishes no answer.*"

Accordingly, we ask here, upon what receipts are we to pay? How is the proper proportion of the receipts that are attributable to the capital invested in the business to be ascertained? How shall we determine what proportion of the receipts is due to skill of management, labor, etc.? The ordinance furnishes no answer.

But the ambiguity just discussed is not the only ambiguity in the ordinance. By the express terms of the ordinance there is to be deducted from receipts (derived from the investment of capital in the business engaged in) "the receipts or proceeds from the *use* or sale of real property."

Now, as alleged in the complaint and admitted by the demurrer, no telephone or telegraph business, and particularly no telephone business, can be conducted without the use of central office equipment. No telephone service of any kind can be rendered without the use of such equipment. This equipment must be housed in buildings, and the buildings attached to land. The amended complaint alleges that there are eleven central office buildings in Seattle, housing this central office equipment, and that the appellant owns the lands and buildings housing ten of these units of central office equipment. But, according to the definition of gross income in the ordinance, the appellant is to *deduct* from its receipts such receipts or proceeds as arise *from the use of real property.* But it is plain and obvious that the appellant could not take in a dollar without the use of real property.

What, therefore, is the amount that the appellant is to deduct by reason of the use of this real property? Is it the whole amount of its receipts? If so, this ordinance has no application to the appellant. But if the appellant is to deduct annually such percentage of its receipts as arise from the use of real property, how is such percentage to be determined? Is the appellant to take the total reproduction value of all the company's property in the city and find

what percentage the present value of the land and buildings bears to that total, and use that percentage? Or is it to derive the percentage in some other fashion? How, in short, is the appellant to determine this percentage? "Shall it be by valuing the entire plant, and deducting therefrom the proper valuation [of the real estate], and apportioning the gross earnings according to these amounts? If so, how shall this value be fixed and by whom? The act furnishes no answer." (146 Mo. 155)

And on what basis is the entire plant and the real estate to be valued in order to determine the percentage relation between these two items of property? Are they to be valued on cost, or cost of reproduction, or cost of reproduction less depreciation, or fair value, or by some other method? The ordinance furnishes no answer.

Moreover, the appellant is engaged in furnishing intrastate telephone toll service. In order to furnish that service to Seattle patrons, the appellant must and does own central office equipment housed in buildings located on land situated in the various cities and towns in the State of Washington in which the appellant operates.

Now we assumed in the court below, and we assume here, for the sake of argument, that the receipts from such intrastate business are susceptible of taxation by the City. But under the definition of gross income in this case there must be deducted from all the receipts the receipts from the use of real property. Again we ask, who is to determine the percentage of receipts derived from the use of real

property located in the various cities and towns in the state? Obviously more real property is used in the transmission of an intrastate toll message than is used in the furnishing of exchange service, because not only is such real property used in the city from which the message is transmitted but also real property is used and necessarily used in the city to which the message is transmitted. The cost of real property used by the appellant in each of these cities differs. So likewise does the present value. The percentage of receipts derived from the use of real property of the appellant in the transmission of a toll message from Seattle to Tacoma will differ from the percentage in the case of a Seattle-Walla Walla or a Seattle-Vancouver message or in the case of messages from Seattle to any of the other ninety-five cities or towns in the State of Washington in which appellant operates.

Again, by virtue of its public obligation to serve adequately all persons who apply for service, the cost and the value of the appellant's plant changes almost from hour to hour. The value even of real estate at times fluctuates rapidly.

Therefore, on any basis, cost, reproduction, fair value, et al., which might be adopted—and the ordinance furnishes not even a hint for the employment of any particular basis—the percentage relation between real estate and the remaining property of the appellant would change almost daily. How can such a taxing act be administered?

In the case of *State ex rel. Crow, Atty. Genl. v. West Side Street Ry. Co.*, 146 Mo. 155, hereinbefore

cited, the statute not only provided that a street franchise should be sold to the bidder who would give the largest percentage yearly of the gross receipts derived from the use and occupation of the streets, but also that such percentage was to be increased "for each period of five years" to correspond with the increase in the value of the land thus occupied and used. Of this last provision, the Supreme Court of Missouri said:

> "Again, the percentage is to be increased in 'each period of five years' 'to correspond with the increase in the value of the land thus occupied and used.' But the act gives no *intimation* by whom or in what manner this increase is to be settled and determined. There is *painful obscurity*, too, as to what is meant by the 'increase in value of the land thus occupied and used.' Some of the counsel for the state say that the proviso should be rejected in toto, as inapplicable to street railways, where the streets only are so occupied. The act, however, declares that the same rule shall govern the disposition of all the franchises mentioned therein. It was certainly designed to increase the percentage 'as the years go by,' where street railways are concerned, fully as much as in other cases. There is nothing to indicate that any special favors are to be accorded them. Then the act has to do almost entirely with franchises which involve the use of the streets only, and in which simply that privilege will be asked. If the requirement for an increased payment for the franchise, after five

years, is meaningless in those cases, the proviso is practically eliminated. . . . Counsel say that instances may arise wherein a street railway company, in addition to the occupation of the streets with its tracks, may also desire for some of its purposes the possession of land belonging to the municipality, and there the proviso can be made effective. This construction would bring up an additional difficulty. *There is no possible method by which the gross receipts derived from the use and occupation of the lot of ground can be ascertained, and the act makes no provision for doing so.* Other counsel for the state contend that 'land,' as here used, refers to the franchise granted, and that the per cent of gross earnings to be paid for the same, under this proviso, must be increased every five years, in proportion to the increase in the value of said franchise, as shown by the gross receipts derived therefrom. It is argued, upon the other hand, that this cannot have been the intention, for the city at the original per cent will receive its due share of any increase in the earnings. Counsel upon the same side of the controversy have been unable to agree as to the proper construction to be adopted. It will be thus seen that it cannot be stated with *any degree of certainty* what meaning should be ascribed to this part of the act. No bidder can know what he will have to pay under it. No municipal officer, when called upon to accept or reject a bid, can say what the city will receive by virtue of it.

"It will be also noticed that the increase in the percentage is to be made for each period of five years in proportion to the increase in the value of the land. Between what years shall the comparison be made? Must it be the last year of the first period with the first year of the next, or the first year of the first term with the last year of that which follows? Or shall no rent be paid until the average valuation of one period of five years can be compared with the average of another, and in that way the ratio of increase be reached? Who shall say what years shall be selected for the purpose of comparison? The act gives us no data upon which to predicate a reply to these questions. These are matters which are not provided for therein, and without which the act cannot be carried into practical effect. *The courts cannot aid the defective phrasing of an act; we cannot add and mend, and by construction make up deficiencies which are left there.*' This *attempt* at legislation is so *indefinite* and *uncertain*, by reason of the effort to regulate the disposition of a great number of franchises by one general rule, that we must hold it incapable of practical operation and enforcement. Its *provisions are so obscure* that it is *impossible* to *ascertain and declare their proper meaning*. 'If the terms in which a statute is couched be so vague as to convey no definite meaning to those whose duty it is to execute it ministerially or judicially, it is necessarily inoperative'."

No further elaboration of the proposition that the ordinance is vague, indefinite and impossible of execution is, we think, necessary.

The applicable legal rule as to enactments of the character of the challenged ordinance is well stated by Judge Marshall, writing the opinion of the court in *State ex rel. Husting v. State Board of Canvassers*, 159 Wis. 216. He said:

> "If the enactment is so uncertain that the court is unable to determine, with any reasonable degree of certainty, what the legislature intended, or it is so incomplete that it cannot be executed, there is no other course open but to condemn it as void for uncertainty, as this court has done on other occasions, and other courts have done so often that the duty in that regard has become a matter of unwritten law."

Out of the host of cases decided by state courts holding statutes void for indefiniteness, we instance only a few and quote below, in each of the cases referred to, the words which, because they were vague and indefinite, rendered the statutes in the respective cases void.

Mayhew v. Nelson, 346 Ill. 381.
"Prevailing rate of wages."

Railroad Commission v. Grand Trunk Western R. Co., 179 Ind. 255.
"Approved block system."

Louisville & N. R. Co. v. Commonwealth, 99 Ky. 132.
"Just and reasonable toll."

Ex parte Lucas, 161 Ark. 180.
"Most centrally situated."

People v. Pace, 73 Cal. App. 548.
"Repeated and successive transactions."

State v. International & G. N. Ry. Co., 165 S. W. 892.
"Light repairs."

Edwards v. Browne Coal Co., 213 Iowa, 1027.
"Safe and proper manner."

State v. Powles, 90 Wash. 112.
"Principal part of a business."

C. B. & Q. R. R. Co. v. People, 77 Ill. 443.
"Unreasonable and extortionate rate."

Ex parte Schmolke, 199 Cal. 42.
"Usual transfer delivery zone."

State v. Parker, 183 Minn. 588.
"On the same lot."

International & G. N. R. R. Co. v. Mallard, 277 S. W. 1051.
"Obscure view of a railroad crossing."

Abbott v. Andrews, 45 S. W. (2d) 568.
"Vehicle moving slowly."

This court itself in a number of cases has announced that an enactment, containing a penalty, exacting obedience to a rule or standard which is so vague and indefinite as really to be no rule or standard at all, is wholly void.

In *Connally v. General Construction Co.*, 269 U. S. 385, this court held void, on the ground of indefinite-

ness, an act of the Oklahoma legislature which provided that any contractor entering into a contract with the state should pay to his employees "not less than the current rate of per diem wages in the locality where the work" was to be performed. It is said in the opinion in that case that

> "a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

In *Champlin Refining Co. v. Corporation Commission of Oklahoma*, 286 U. S. 210, the Refining Company brought a suit to enjoin the Commission and the Attorney General from enforcing certain provisions of an Act of Oklahoma passed in 1915, which prohibited the production of crude oil or petroleum in the State of Oklahoma in such manner and under such conditions as to constitute waste. "Waste" was defined in the act to include "in addition to its ordinary meaning, economic waste, under ground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands." The court held that the provision of the act relative to waste was so vague and indefinite as to render the act inoperative and void, saying (p. 568):

> "The general expressions employed here are not known to the common law or shown to have any meaning in the oil industry sufficiently definite to enable those familiar with the oper-

ation of oil wells to apply them with any reasonable degree of certainty. The meaning of the word 'waste' necessarily depends upon many factors subject to frequent changes. No act or definite course of conduct is specified as controlling, and, upon the trial of one charged with committing waste in violation of the act, the court could not foresee or prescribe the scope of the inquiry that reasonably might have a bearing or be necessary in determining whether in fact there had been waste. It is no more definite than would be a mere command that wells shall not be operated in any way that is detrimental to the public interest in respect of the production of crude oil. And the ascertainment of the facts necessary for the application of the rule of proportionate production laid down in section 4 would require regular gauging of all producing wells in each field; a work far beyond anything that reasonably may be required of a producer in order to determine whether in the operation of his wells he is committing an offense against the act.

"In the light of our decisions, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all. *United States v. L. Cohen*

Grocery, 255 U. S. 81, 89, 41 S. Ct. 298, 65 L. ed. 516, 14 A. L. R. 1045; *Small Co. v. Am. Sugar Ref. Co.*, 267 U. S. 233, 239, 45 S. Ct. 295, 69 L. ed. 589; *Connally v. General Construction Co.*, *supra*; *Cline v. Frink Dairy Co.*, 274 U. S. 445, 454, 47 S. Ct. 681, 71 L. ed. 1146; *Smith v. Cahoon*, 283 U. S. 553, 564, 51 S. Ct. 582, 75 L. ed. 1264."

In addition to the cases cited in the foregoing quotation, see, also:

International Harvester Co. v. Kentucky, 234 U. S. 216, 222;

Collins v. Kentucky, 234 U. S. 634, 638;

Yu Cong Eng v. Trinidad, 271 U. S. 500, 517.

The ordinance in the case at bar is a penal ordinance. It provides that each day's violation of the ordinance constitutes a separate offense, and each offense may be punished by a fine up to $300, or by imprisonment in the city jail for a term of ninety days, or by both such fine and imprisonment. But even if the ordinance contained no penal provision at all, nevertheless the vagueness and indefiniteness of the definition of gross income would constitute a denial of due process of law.

In *Small Co. v. American Sugar Refining Co.*, 267 U. S. at p. 239, Justice Van Devanter, rendering the opinion of the court, said:

"The ground or principle of the decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedi-

ence to a rule or standard which was so vague and indefinite as really to be no rule or standard at all. Any other means of exaction, such as declaring the transaction unlawful or stripping a participant of his rights under it, was equally within the principle of those cases. They have been so construed and applied by other courts in civil proceedings."

Now, if the doctrine therein announced is applicable in any civil case, *a fortiori* it must be applicable in a taxing case, because, as said by the Supreme Court of Texas:

"It is of the utmost importance for the protection of the taxpayer that tax laws should be certain both as to the thing taxed and as to the amount of the tax and the manner of its ascertainment, that the taxpayer may have an opportunity, without the expense of litigation, to pay such taxes as he may owe, and a tax law which does not accomplish this purpose ought to be held invalid, . . ." (62 Tex. 635)

Moreover, the general rule as to the application or construction of all taxing statutes is pithily expressed by Lord Fitzgibbons, L. J., in *In re Finance Act*, 1894, and *Studdert* (1900) 2 I. R. 400, 410, C. A.:

"The benefit of the doubt is the right of the subject."

This ordinance also offends another general rule of universal application, that legislative acts affecting the liberty or property of a citizen "ought to be plainly, and clearly, and not cunningly and darkly penned," a doctrine neither novel (Coke's 4th Inst.

p. 42) nor outworn (*Connally v. General Construction Co.*, 269 U. S. 385).

The Supreme Court of Washington attempted to answer the precise argument herein made, in three ways. It said, first:

> "The definition of 'Gross Income,' contained in the ordinance, is substantially the same as that contained in the act of West Virginia, considered in the case of *Hope Natural Gas Co. v. Hall, State Tax Commissioner*, 274 U. S. 284. The tax challenged in that case was sustained."

But the act of West Virginia contained no provision for the deduction from receipts of the receipts derived from the use of real property. The definitions in the statute of West Virginia and in the Seattle ordinance are therefore not the same. Wholly irrespective of that, however, the point herein made was not made in the *Hope Natural Gas Co.* case at all. That being true, how can the decision of this court in that case have any bearing whatsoever here? Surely an opinion is not a decision on a point neither raised, suggested, mentioned nor discussed.

Cohens v. Virginia, 6 Wheat. 264, 399;
Union Tank Line Co. v. Wright, 249 U. S. 275, 286;
Continental Mutual Savings Bank v. Elliott, 166 Wash. 283, 300.

The next proposition announced by the Supreme Court of Washington that "It would be practically impossible to define 'Gross Income' so that more or less pertinent objections could not be aimed at the definition," is not correct.

There are innumerable statutes imposing taxes on gross receipts, and legislative bodies enacting such statutes have not found it necessary to employ the verbiage found in the Seattle ordinance.

Furthermore, it would seem indisputable that if *pertinent legal objections* can be made to a definition, the definition is invalid.

The third reason given by the court below for holding the definition plain and unambiguous was that "under present day systems of accounting," appellant could ascertain the amount of the tax. But surely it is not the function of accountants to determine questions of law, to construe vague and indefinite statutes, or to rule on constitutional rights. The statement of the court is tantamount to a declaration that under present day systems of accounting indefinite statutes are rendered definite, and invalid statutes are rendered valid.

Moreover, how can some accountant determine how much of the appellant's receipts are derived from the skill of its managers and the labor of its employes, as distinguished from the investment of capital? What would be the method of an accountant for appraising these different factors which enter into the production of receipts?

Again, if the Supreme Court of Missouri was unable even to think of any method by which the proportion of the street railway company's receipts derived from the use of the streets could be determined, how can some accountant determine how much of the appellant's receipts are derived from the use of its

real property in Seattle and the other 95 cities and towns in the state in which it operates.

For the reasons herein stated, the judgment of the Supreme Court of the State of Washington should be reversed.

Respectfully submitted,

OTTO B. RUPP,
ALFRED SUTRO,
Attorneys for Appellant.

McMICKEN, RAMSEY, RUPP & SCHWEPPE,
PILLSBURY, MADISON & SUTRO,
Of Counsel.

APPENDIX

ORDINANCE No. 62662
(Council Bill 53240)

AN ORDINANCE relating to, and providing for, a license or occupation tax upon certain businesses, occupations, pursuits and privileges; defining offenses and providing penalties.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. *Exercise of Revenue License Power*: The provisions of this ordinance shall be deemed an exercise of the power of the City of Seattle to license for revenue:

Section 2. *Definitions*: In construing the provisions of this ordinance, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

Gross Income: The value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated (excluding receipts or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses.

Person or Persons: Persons of either sex, firms, co-partnerships, corporations and other associations of natural persons, whether acting by themselves or by servants, agents or employes.

Taxpayer: Any person liable to the license fee or tax imposed by this ordinance.

Tax Year or Taxable Year: The year commencing March 1st and ending on the last day of February of the following year, or, in lieu thereof, the taxpayer's fiscal year when permission is obtained from the City Comptroller to use the same as the tax period.

Section 3. *"Occupation License" Required*: After the 1st day of July, 1932, no person shall engage in or carry on any business, occupation, pursuit or privilege for which a license fee or tax is imposed by this ordinance without having first obtained, and being the holder of, a valid and subsisting license so to do, to be known as an "Occupation License."

Any person engaging in, or carrying on, more than one such business, occupation, pursuit or privilege shall pay the license tax so imposed upon each of the same.

Any taxpayer who engages in, or carries on, any business subject to tax hereunder without having his "Occupation License" so to do, shall be guilty of a violation of this ordinance for each day during which the business is so engaged in or carried on, and any taxpayer who fails or refuses to pay the license fee or tax or any part thereof on or before the due date shall be deemed to be operating without having his license so to do.

Section 4. *License Tax Year*: All "Occupation

Licenses" shall be for the tax year for which issued and shall expire at the end of such tax year.

Such "Occupation License" and the fee or tax therefor hereby imposed shall be for the year commencing March 1st and ending on the last day of February of the following year; Provided, however, that if the taxpayer in transacting his business keeps the books reflecting the same for a fiscal year not based on the calendar year, he may, with the assent of the City Comptroller, obtain his license for the period of his current fiscal year which shall be deemed his tax year, and pay the fee or tax computed upon his gross income made during his fiscal year (next preceding his tax year) covering his accounting period as shown by the method of keeping the books of the business.

Section 5. *Occupations Subject to Tax—Amount*: There are hereby levied and shall be collected annual license fees or occupation taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as follows:

(a) Upon every person engaged in or carrying on a telegraph and/or telephone business, a fee or tax equal to four per cent (4%) of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than One Thousand ($1,000.00) Dollars per tax year.

(b) Upon every person engaged in or carrying on the business of selling or furnishing gas and/or water

for hire, a fee or tax equal to three per cent (3%) of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than One Thousand ($1,000.00) Dollars per tax year.

(c) Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, a fee or tax equal to three per cent (3%) of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than Two Hundred Fifty ($250.00) Dollars per tax year.

(d) Upon every person conducting or engaged in the business of supplying steam heat or power to the public for hire, a fee or tax equal to four per cent (4%) of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than Fifty ($50.00) Dollars per tax year.

(e) Upon every person engaged in the business of operating or conducting a fire alarm system, district telegraph or burglary and police alarm system for hire, a fee or tax equal to two per cent (2%) of the total gross income from such business in the City during his fiscal year next preceding the tax year for which the license is required; provided, however, that the minimum fee or tax shall not be less than One Hundred ($100.00) Dollars per tax year.

Section 6. *City of Seattle Subject to Tax*: Sub-

divisions (b) and (c) of Section 5 shall, as far as permitted by law, be applicable to the City of Seattle, except that said City shall not, as a taxpayer, be required to conform to the other provisions of this ordinance.

Section 7. *Occupations and Privileges Subject to Tax Amount*: There are hereby levied, and shall be collected, annual license fees or occupation taxes against the persons on account of the business activities or privileges and in the amounts hereinafter fixed, as follows:

(a) Upon every person engaged in or carrying on the business of operating any motor vehicle for the transportation of passengers for hire at rates per trip or based on the distance and/or time employed, and driven by the owner or his representative under the routing or direction of the passenger or person hiring the same, the following tax or fee:

When such vehicle does not stand in or upon any public street, alley or other public place, or upon any place open to the public for the use of vehicles while awaiting employment:

For each such vehicle having a seating capacity of seven (7) persons, or less, Fifteen ($15.00) Dollars per tax year;

For each such vehicle having a seating capacity of eight (8) to ten (10) persons, inclusive, Twenty ($20.00) Dollars per tax year;

For each such vehicle having a seating capacity of eleven (11) to fifteen (15) persons, inclusive, Thirty-six ($36.00) Dollars per tax year;

For each such vehicle having a seating capacity of

sixteen (16) to twenty (20) persons, inclusive, Fifty-four ($54.00) Dollars per tax year;

For each such vehicle having a seating capacity of more than twenty (20) persons, Seventy-two ($72.00) Dollars per tax year.

When such vehicle stands in or upon any public street, alley or other public place, or any place open to the public for the use of vehicles while awaiting employment:

For each such vehicle having a seating capacity of seven (7) persons, or less, Thirty ($30.00) Dollars per tax year;

For each such vehicle having a seating capacity of eight (8) to ten (10) persons, inclusive, Thirty-six ($36.00) Dollars per tax year;

For each such vehicle having a seating capacity of eleven (11) to fifteen (15) persons, inclusive, forty ($40.00) Dollars per tax year;

For each such vehicle having a seating capacity of sixteen (16) to twenty (20) persons, inclusive, Fifty-four ($54.00) Dollars per tax year;

For each such vehicle having a seating capacity of more than twenty (20) persons, inclusive, Seventy-two ($72.00) Dollars per tax year.

In determining the seating capacity of any such vehicle the driver and conductor shall be included.

(b) Upon every person engaged in or carrying on the business of operating any motor vehicle over the public streets for the purpose of sight-seeing or showing points of interest, and not elsewhere herein mentioned and licensed, a fee or tax in the same amount

as required for the business of operating the vehicle mentioned in Sub-Section (a) of this section, provided, however, that the vehicles mentioned in this subsection may be operated by the licensee at rates based on time employed, whether for sight-seeing purposes or not (known as "for hire" service) without securing in addition the license required by said Sub-Section (a).

In determining the seating capacity of any such sight-seeing vehicle the driver and announcer shall be included.

(c) Upon every person engaged in or carrying on the business of operating any motor vehicle over the public streets for the transportation of passengers for hire between common carrier passenger terminals or depots and hotels, and not elsewhere herein mentioned and licensed, for each vehicle Sixty ($60.00) Dollars per tax year.

(d) Upon every person engaged in or carrying on the business of letting the use of any motor vehicle at rates per trip, or based on distance travelled, or time employed, and to be driven and routed or directed by the person or persons hiring or renting the same, the following tax or fee:

For each such vehicle which does not stand in or upon any public street, alley or other public place, or any place open to the public for the use of vehicles while awaiting employment, Fifteen ($15.00) Dollars per tax year;

For each such vehicle standing in or upon any public street, alley or other public place, or any place open to the use of the public for vehicles while await-

ing employment, Thirty ($30.00) Dollars per tax year.

(e) Upon every person engaged in or carrying on the business of operating any vehicle drawn by or attached to any motor driven vehicle and used for the transportation of baggage, express, freight, household goods, merchandise or materials for hire, and which vehicle receives or discharges baggage, express, freight, household goods, merchandise or other materials at points within or without the City, and which does not operate over a defined route:

Each such vehicle of not more than 1 ton capacity, $3.00 per tax year.

Each such vehicle of not more than 2 tons capacity, $6.00 per tax year.

Each such vehicle of not more than 3 tons capacity, $9.00 per tax year.

Each such vehicle of not more than 4 tons capacity, $12.00 per tax year.

Each such vehicle of not more than 5 tons capacity, $15.00 per tax year.

Each such vehicle of not more than 6 tons capacity, $18.00 per tax year.

Each such vehicle of more than 6 tons capacity, $21.00 per tax year.

No license required by this ordinance for the operation of any vehicle shall be issued unless the licenses and/or permits therefor required by law or ordinances other than this have been granted.

Section 8. *Tax Apportioned for Year 1932*: For the remainder of the tax year 1932, ending on the last day of February, 1933, the fees or taxes herein

imposed shall be apportioned in the ratio of said remainder to a full tax year.

Section 9. *Exceptions and Deductions*: There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed so much thereof as is derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents, and any amount paid by the taxpayer to the United States, the State of Washington, or the City of Seattle, as excise taxes levied or imposed upon the sale or distribution of property or services.

Nothing in this ordinance shall be construed as requiring a license, or the payment of a license fee or tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States, or which would not be consistent with the Constitution or laws of the State of Washington.

Any person subject to the payment of a license fee or tax under the provisions of any ordinance of the City, other than this, on account of engaging in any activity for which he is liable to tax hereunder, may deduct the amount of such fee or tax from the amount of fee or tax imposed by this ordinance on account of such activity, but such person shall nevertheless, in the manner herein provided for, apply for and procure an "Occupation License."

Section 10. *Application or Return for License*: On or before the 1st day of July, 1932, and thereafter on or before the first day of each tax year, every taxpayer shall apply to the City Comptroller for an "Oc-

cupation License" upon blanks or forms of return to be prepared and provided by him requesting such information as may be necessary to enable him to arrive at the lawful amount of the fee or tax. The taxpayer shall, in a legible manner, write in such blank or form of return the information required and shall sign the same and by affidavit at the foot thereof shall swear or affirm that the information therein given is full and true and that he knows the same to be so.

Every such application or return shall be accompanied by a remittance by bank draft, certified check, cashier's check or money order, payable to the City Treasurer, or in cash, in the amount of the tax or fee or installment thereof required by the provisions hereof.

If the applicant be a partnership, the application or return must be made by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, co-partnership or non-resident individual, by the resident agent or local manager of said corporation, co-partnership or individual.

Section 11. *Monthly and Quarterly Payment of Tax:* Where the amount of the license fee or tax is based upon gross income, the taxpayer may pay his fee or tax in equal monthly installments during the life of his license, each such installment to be paid on or before the 10th day of the month. In all other cases the taxpayer may pay his fee or tax in equal installments during the life of his license, each such installment to be paid on or before the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December, respectively.

Section 12. *When Tax Based on Current Year—Commencement of Business During Tax Year*: Where a business, occupation or pursuit subject to tax upon gross income has not been carried on for the full calendar or fiscal year next preceding the tax year for which license is required, the license fee or tax shall be paid monthly in installments during the life of the license on or before the 10th day of the month, and shall be based upon the gross income for the month next preceding that in which payment is due. In such cases the taxpayer shall make monthly returns similar to the annual returns provided for herein on or before the 10th day of the month, under oath or affirmation covering the business of the previous month.

In all other cases where a person commences during any tax year to engage in any business, occupation, pursuit or privilege, he shall be entitled to a license for the remainder of such tax year for the required fee apportioned in the ratio of said remainder to a full tax year.

Section 13. *Monthly payments—License Prerequisite*: In any case where the taxpayer pays his license fee or tax monthly he shall nevertheless first procure his "Occupation License" in the manner herein required before commencing or continuing in business, and shall pay the minimum fee or tax therefor, which shall be credited against future installments.

Section 14. *Sale or Transfer of Business*: Upon the sale or transfer during any tax year of a business on account of which a fee or tax is hereby required, the purchaser or transferee shall, if the fee or tax

has not been paid in full for said year, be responsible for its payment for that portion of said year during which he carries on such business.

Section 15. *Taxpayer to Keep Books and Records —Returns Confidential*: It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records an account which shall accurately reflect the amount of his gross income, which account shall always be open to the inspection of the City Comptroller, or his duly authorized agent, and from which said officer or his agent may verify the return made by the taxpayer.

The applications, statements or returns made to the City Comptroller, pursuant to this ordinance, shall not be made public, nor shall they be subject to the inspection of any person except the Mayor, the Corporation Counsel, the City Comptroller, or his authorized agent, and members of the City Council.

Section 16. *Comptroller to Investigate Returns*: If any taxpayer fails to apply for license or make his return, or if the City Comptroller is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, said officer, or his authorized agent, may enter the premises of such taxpayer at any reasonable time for the purpose of inspecting his books or records of account to ascertain the amount of the fee or tax or to determine the correctness of such statements, as the case may be, and may examine any person under oath administered by said officer, or his agent, touching the matters inquired into, or said officer, or his authorized agent, may fix a time and place for an investigation of the

correctness of the return and may issue a subpoena to the taxpayer, or any other person, to attend upon such investigation and there testify, under oath administered by said officer, or his agent, in regard to the matters inquired into and may, by subpoena, require him, or any person, to bring with him such books, records and papers as may be necessary.

Section 17. *Over or Underpayment of Tax*: If the City Comptroller upon investigation or upon checking returns finds that the fee or tax paid or any of them is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the General Fund. If the City Comptroller finds that the fee or tax paid is less than required, he shall send a statement to the taxpayer showing the balance due, who shall within three (3) days pay the amount shown thereon.

Section 18. *Remedy for Non-payment of Tax*: If any taxpayer fails to apply for license, or make his return, or to pay the fee or tax therefor, or any part thereof, within three (3) days after the same shall have become due, the City Comptroller shall ascertain the amount of the fee or tax or installment thereof due and shall notify such taxpayer thereof, who shall be liable therefor in any suit or action by the City for the collection thereof. The City Comptroller shall also notify the Corporation Counsel in writing of the name of such delinquent taxpayer and the amount due from him and said officer shall, with the assistance of the City Comptroller, collect the same by any appropriate means or by suit or action in the name of the City.

Section 19. *Appeals to City Council*: Any taxpayer aggrieved by the amount of the fee or tax found by the City Comptroller to be required under the provisions of this ordinance, may appeal to the City Council from such finding by filing a written notice of appeal with the City Clerk within five (5) days from the time such taxpayer was given notice of such amount. The Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than ten (10) days after the filing of the notice of appeal, and he shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing, the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The City Council shall thereupon ascertain the correct amount of the fee or tax by resolution and the City Clerk shall immediately notify the appellant thereof, which amount, together with costs of the appeal, if appellant is unsuccessful therein, must be paid within three (3) days after such notice is given.

The President of the City Council, or the Chairman of any committee thereof before which the appeal is to be heard, may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Chairman in charge of the hearing on appeal as to any matter required

of him pertinent to the appeal, and it shall be unlawful for him to fail or refuse so to do.

Section 20. *Comptroller to Make Rules*: The City Comptroller shall have the power, and it shall be his duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this ordinance or with law for the purpose of carrying out the provisions thereof, and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

Section 21. *Licenses—Posting—Unlawful Use Of*: All licenses issued pursuant to the provisions of this ordinance shall be kept posted by the licensee in a conspicuous place in his principal place of business in the City, except that all licenses for the operation of a vehicle shall be attached in a conspicuous place upon the right hand side of such vehicle in a suitable holder to be furnished by the City Comptroller upon the payment of a fee of Twenty-five ($.25) Cents.

No person to whom a license has been issued, pursuant to this ordinance, shall suffer or allow any other person chargeable with a separate license to operate under or display his license, nor shall such other person operate under or display such license.

Section 22. *False Returns, etc.*: It shall be unlawful for any person liable to tax hereunder to fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for any person to make any false or fraudulent application or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in any at-

tempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear and/or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this ordinance.

Section 23. *Effect of Partial Invalidity*: If any provision or section of this ordinance shall be held void or unconstitutional, all other parts, provisions and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 24. *Penalty*: Any person violating or failing to comply with any of the provisions of this ordinance or any lawful rule or regulation adopted by the City Comptroller pursuant thereto, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in any sum not to exceed Three Hundred ($300.00) Dollars, or by imprisonment in the City Jail for a term not exceeding ninety (90) days, or by both such fine and imprisonment.

Section 25. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed the City Council the 23rd day of May, 1932,

and signed by me in open session in authentication of its passage this 23rd day of May, 1932.

JAMES SCAVATTO,
President Pro Tem of the City Council.

Approved by me this 25th day of May, 1932.

PHILIP TINDALL,
Acting Mayor.

Filed by me this 25th day of May, 1932.

Attest: H. W. CARROLL,
City Comptroller and Ex-Officio City Clerk.
(Seal) By E. M. STREET,
Deputy Clerk.

Published May 31, 1932.

H. W. CARROLL,
City Comptroller and Ex-Officio City Clerk.
By E. M. STREET,
Deputy Clerk.